IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No. 899/KB/2020

Under section 59 of the Insolvency & Bankruptcy Code, 2016 r/w regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

In the matter of
DSM Sobisco Foods Private Limited [CIN:U15122WB2015PTC206339] having its registered office at 15A, Hemanta Basu Sarani, Continental Chambers, 5th Floor, Kolkata, WB 700001 IN

Represented by
Mr. Shashi Agarwal
Liquidator DSM Sobisco Foods Private Limited

... Petitioner/Corporate Person

Date of hearing: 04.08.2021
Order pronounced on: 22.09.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances:

For the Petitioner	:	Mr. Shashi Agarwal, PCA

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This court convened *via* video conference today.
2. This is a Company Petition filed under section 59 of the Insolvency and Bankruptcy Code, 2016 *(hereinafter called the "Code")* by a Corporate Person, *viz.*, DSM Sobisco Foods Private Limited [CIN: U15122WB2015PTC206339] (Petitioner/Corporate Person) through Mr. Shashi Agarwal, Liquidator, for voluntary liquidation of the Petitioner/Corporate Person.

The corporate history of the Petitioner/Corporate Person

3. The Petitioner/Corporate Person was incorporated on 14.05.2015 under the Companies Act, 2013, as a private company with the Registrar of Companies, West Bengal. The Registered office of the Petitioner/Corporate Person is situated at 15A, Hemanta Basu Sarani, Continental Chambers, 5th Floor, Kolkata-700001 within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with the present petition.

4. The main objects for which the Corporate Person was incorporated are, *inter alia,* to carry on business of fortified food and beverages, nutrition rich food and beverages, etc.

5. The authorised share capital of the Petitioner/Corporate Person is ₹3,00,00,000/- (Rupees three crore only) divided into 30,00,000 (thirty lakh) equity shares of ₹10/- (Rupees ten only) each. The Petitioner/Corporate Person, at present, has four directors namely, Mr. Suresh Chand Agarwal [DIN: 00112557], Mr. Mahesh Kumar Agarwal [DIN: 00120329], Ms. Ruchira Jaitly [DIN: 07575181] and Ms. Trishita Dalui [DIN: 07644478].

Reasons for voluntary liquidation

6. It is stated in the supplementary affidavit dated 11.02.2021 that “DSM India Pvt Ltd and Sona Biscuits Ltd had same plans and targets. However, due to the inadvertent situation, the Joint Venture did not reach its anticipated goals.” Hence, the management has proposed to close down the business operations of the Corporate Person. Pursuant to this, the Board of Directors (BoD) of the Corporate Person decided to wind up the affairs of the Company by way of Member’s Voluntary Winding up prescribed under the provisions of section 59 of the Insolvency and Bankruptcy Code, 2016 read with regulation 3 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The BoD of the Corporate Person, at its meeting held on 26.03.2019, resolved to liquidate the Corporate Person voluntarily under section 59 of the Code.

Procedural compliances

7. It is submitted that the Directors of the Corporate Person have as per section 59(3)(a) of the Code, approved the Declaration of Solvency and resolved to wind up the company under *"Members Voluntary Winding up"* at the Board meeting held on 30.03.2019. The Directors have declared that they have made full inquiry into the affairs of the Corporate Person and are of the opinion that the Corporate Person has no assets, debts and liabilities, and the Corporate Person is not being liquidated to defraud any person.

8. It has been mentioned in the declaration that the Directors have appended audited financial statements and record of business operations of the Company for the financial years 2016-2017 and 2017-2018. However the same have not been attached with the main Petition. Copies of audited accounts for the year ending on 31.03.2017, 30.03.2018 and 31.03.2019 have been filed separately with a supplementary affidavit dated 05.02.2021.

9. All the four directors have filed their respective affidavits verifying the declaration. The above details have been filed by the Corporate Person with the Registrar of Companies, West Bengal, in Form GNL-2 on 05.04.2019. A copy of the said Form GNL-2 is annexed with the Supplementary Affidavit dated 11.02.2021 as Annexure D at page 31.

10. The members of the Corporate Person in their Extraordinary General Meeting (EGM) held on 30.03.2019 passed a Special Resolution as required under section 59(3)(c) of the Code to liquidate the Corporate Person voluntarily and to appoint Mr. Shashi Agarwal, Insolvency Professional [Reg No.IBBI/IPA-001/IP-P00470/2017-2018/10813] as Liquidator with a remuneration of ₹50,000/- (Rupees fifty thousand only) plus other liquidation expenses, filing fees, reimbursement of actual out of pocket expenses that may be incurred in the process of liquidation.

11. The Liquidator made a public announcement of the commencement of liquidation in Form A of Schedule I as per regulation 14 of Insolvency &

Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in *Financial Express* in English and in *Aajkal* in Bengali on 02.04.2019 inviting the submission of claims due from the Corporate Person by various stakeholders. Copies of newspaper cuttings are annexed to the Petition as Annexure C on page 37. The aforesaid public announcement was also submitted to the Insolvency and Bankruptcy Board of India (IBBI) and was hosted on the IBBI's website on the said date.

12. The Corporate Person notified the Registrar of Companies, West Bengal on 01.04.2019 by filing Form MGT-14 about the passing of a Special Resolution to liquidate the Corporate Person. A copy of the said Form MGT-14 is annexed with the Supplementary Affidavit dated 11.02.2021 on page 53.

13. The Liquidator did not receive any claims from any creditors, workmen, employees or other stakeholders in response to the advertisement published in the newspapers.

14. The Liquidator has intimated the commencement of Liquidation and his appointment to the Income Tax Authority on two occasions *viz*., 28.08.2020 and 10.12.2020. However, no communication has been received by the Corporate Person from the said authority.

15. The Liquidator has also intimated that there are no assets of the Corporate Person. That cash in hand and at Bank amounting to ₹31,893.09 (Rupees thirty-one thousand eight hundred ninety-three and paise nine only) is kept for meeting the expenses of audit, filing fee with the Registrar of Companies and Tribunal and other miscellaneous expenses and hence no sums are available for transfer to the Companies Liquidation Account in terms of regulation 39 Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

16. The Liquidator has filed the Final Report dated 17.03.2020 by way of a supplementary affidavit affirmed by him on 28.12.2020. In the report, the

Liquidator has stated that the Corporate Person did not have any income during the voluntary liquidation period.

17. During the said liquidation process, the Liquidator submits, the liabilities towards expenses, professional fees, reimbursement and statutory dues were paid in full. However, in case of shortfall of remuneration of liquidation, the liquidator undertook to forgo his remuneration.

18. The Certificate dated 17.03.2020 from the Auditor of the Corporate Person on the liquidation accounts of the Corporate Person, shows receipts and payments pertaining to liquidation, *i.e.*, from 30.03.2019 to 16.03.2020. Copy of the said certificate is annexed with the petition on page 45.

19. On hearing the submissions made by the liquidator and perusing the documents annexed to the petition, it appears that the affairs of the Corporate Person have been completely wound up and its assets have been completely liquidated. No liabilities have been left unsatisfied. We are satisfied from the documents on record that the voluntary liquidation is not with the intent to defraud any person.

20. In view of the above facts and circumstances, the Corporate Person deserves to be dissolved and it is ordered accordingly.

21. The Liquidator of the Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies (RoC), West Bengal immediately and, in any case, within fourteen days of receipt of this order. The RoC shall take further necessary action upon receipt of a copy of this order.

22. The Company Petition bearing **CP (IB) No. 899/KB/2020** is disposed of.

23. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

25. File be consigned to the records.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

22.09.2021

SR (LRA)